

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION

CARLOS J. WALLACE,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

No. 1:24-CV-41-SNLJ

**MEMORANDUM AND ORDER**

This matter is before the Court upon self-represented Movant Carlos J. Wallace’s letter, dated May 21, 2024. ECF No. 9. Movant requests the Court to grant him *in forma pauperis* status so he can receive copies of his “sentencing transcript, federal docket sheet, and judgment and statement of reasons” at no charge. *Id.* As explained below, the Court will deny his request to proceed *in forma pauperis* and decline to provide a copy of the sentencing transcript without prepayment. However, the Clerk of Court has sent him a copy of his docket sheet and Judgment at no cost.

**Motion to Proceed *in forma pauperis***

Because there is no filing fee for a § 2255 motion, Movant need not be granted *in forma pauperis* status in order to maintain this action. *See* Rule 3, Advisory Committee Notes of the Rules Governing Section 2255 Proceedings (“There is no filing fee required of a Movant under these rules . . . [t]his is . . . done to recognize specifically the nature of a § 2255 motion as being a continuation of the criminal case whose judgment is under attack”). Therefore, Movant’s request for leave to proceed *in forma pauperis* will be denied as moot. The Court notes that even if this

action was one where such a motion could be granted, persons who receive *in forma pauperis* status are not automatically entitled to free copies of documents.

### **Request for Copies**

Plaintiff requests this Court to provide free copies of his “sentencing transcript, federal docket sheet, and judgment and statement of reasons.” While the Court will provide plaintiff with a copy of his docket sheet and judgment from *United States of America v. Wallace*, Case No. 1:20-CR-00034-SNLJ (E.D. Mo.), the remainder of the request will be denied.

Neither statutory authority nor this Court’s practice requires the provision of free copies of transcripts or other court records to aid in the preparation of a § 2255 motion. *See* 28 U.S.C. § 753(f). Section 753(f) requires the provision of transcripts at government expense only upon certification by the Court that a § 2255 motion already on file is not frivolous, and that a transcript is needed to decide the issues presented. The Eighth Circuit, citing § 753(f), has held that “any request for a free transcript prior to the filing of a section 2255 complaint is premature.” *United States v. Losing*, 601 F. 2d 351, 352 (8th Cir. 1979). *See also Chapman v. United States*, 55 F.3d 390, 390-91 (8th Cir. 1995).

At present, Movant does not have a non-frivolous § 2255 motion pending in this Court. On March 8, 2024, the Court reviewed the motion to vacate pursuant to 28 U.S.C. § 2255 and determined it was defective because it was not on the proper form as required by the Local Rules of this Court. ECF No. 2 (citing E.D. Mo. L.R. 2.06(A) (requiring all actions by self-represented litigants to be filed on Court-provided forms)). The Clerk sent Movant the proper form and the Court directed him to resubmit within thirty days, or by April 8, 2024. Instead of complying, Movant filed an action with the United States Court of Appeals for the Eighth Circuit seeking authorization to file a successive § 2255 motion. The Eighth Circuit denied the authorization as

unnecessary because he had not yet filed his first § 2255 motion. ECF No. 3. A mandate was issued on April 15, 2024. ECF No. 4. On April 22, 2024, the Court *sua sponte* granted Movant an additional thirty (30) days, or by May 22, 2024, to file an amended § 2255 motion on the proper Court form. This Order was twice returned to the Court as undeliverable. ECF Nos. 6 and 7.

Because Movant has yet to file a non-frivolous § 2255 motion on the Court's "Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody" form, he is not entitled to receive copies of transcripts or other court records at government expense. If he wishes to receive copies of any materials, he must prepay for them at the rate of fifty cents (\$.50) per page. The sentencing transcript, ECF No. 100, is thirty (30) pages. The cost of such copies must be paid in advance and submitted with the request. If plaintiff wishes to obtain copies, he must resubmit his request describing the exact documents he wishes to receive *and include payment*. To facilitate this, the Clerk has mailed Movant a copy of the criminal docket sheet. The Court notes, the Clerk has also mailed Movant a copy of the Judgment [ECF No. 87] without charge as a courtesy.

#### **Amended Petition**

Movant's amended § 2255 motion was due on May 22, 2024. To date, he has not filed an amended motion or sought additional time to do so. Because the order directing him to file an amended motion was twice returned as undeliverable, the Court will *sua sponte* grant him an additional twenty-one (21) days to comply and file an amended § 2255 motion on the proper Court form.

Accordingly,

**IT IS HEREBY ORDERED** that Movant's letter, construed as a motion for leave to proceed *in forma pauperis* [ECF No. 9], will be **DENIED as moot**.

**IT IS FURTHER ORDERED** that Movant's request for a no charge copy of his sentencing transcript will be **DENIED**.

**IT IS FURTHER ORDERED** that the Clerk shall mail to Movant a "Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody" form.

**IT IS FURTHER ORDERED** that Movant shall complete the form and return it to the Court within twenty-one (21) days of the date of this Order.

**IT IS FINALLY ORDERED** that if Movant fails to comply with this Order, the Court will dismiss this action without prejudice and without further notice.

Dated this 29<sup>th</sup> day of May, 2024.

A handwritten signature in cursive script, reading "Stephen N. Limbaugh, Jr.", is positioned above a horizontal line.

STEPHEN N. LIMBAUGH, JR.  
SENIOR UNITED STATES DISTRICT JUDGE